

REMARKS

5. Claims 1, 3-6 and 22-33 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 4-7 and 9 of co-pending U.S. Patent Application Serial no. 10/762,104.

It is the understanding of the applicant that this rejection is currently held in abeyance pending the disposition of the claims.

7. Claims 1-7 and 22-39 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent 7,179,538 alone, or in view of U.S. Patent No. 2,732,325 (hereinafter "Lindenfeiser"), U.S. Patent 3,589,974 (hereinafter "Albrinck"), U.S. Patent 4,132,821 (hereinafter "Hiers").

At present, claims 1-7 and 22-39 are the subject of rejections other than the above-described double patenting rejection. Consequently, it is not yet clear if claims will issue in the present application, or if claims will issue, the form of those allowed claims. Applicants respectfully request that this rejection be held in abeyance until claims are allowed but for the above-described double patenting rejection, at which case the rejection can be properly addressed.

8. Claims 1-2, 4-6 and 24-25 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,698,978 (hereinafter "McQuade").

The undersigned attorney wishes to thank Examiner Tran for conducting a telephone interview today, September 25, 2007. In the interview, the above rejection was discussed for two separate reasons. First, the undersigned attorney noted that claims 24 and 25 depend from claim 7, which is not rejected as being anticipated by McQuade. In view of claim 7 not being rejected as being anticipated by McQuade, Ex. Tran agreed that claims 24 and 25 should be removed from the present rejection. The undersigned attorney thanks Ex. Tran for her clarification. Second, the undersigned attorney and Ex. Tran discussed the term "leather material" and what would constitute a "leather material". The definition of the terms "leather" and "bonded leather" were identified in the present application. No agreement was reached. Here again, the undersigned attorney thanks Ex. Tran for her cooperation and explanation.

Case law dictates that the classic test for anticipation, under 35 U.S.C. §102(b), requires that every limitation in a claim must be present in a single source reference for that reference to "anticipate" the claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379 (Fed. Cir. 1986), cert. denied, 480 U.S. 947 (1987) ("It is axiomatic that for prior art to anticipate under § 102 it has to meet every element of the claimed invention, and that such a determination is one of fact."); *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) ("It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question subject to review under the clearly erroneous standard."). McQuade cannot anticipate claims 1-2 or 4-6 because it does not disclose a decorative layer consisting essentially of a leather material as is recited in independent claim 1.

McQuade discloses a laminate including a print sheet comprising a cellulosic sheet and a pattern that provides an appearance that simulates leather. (See Col. 2, lines 43-46; Col. 3, lines 20-28) This print sheet is not a leather material, as is recited in claim 1. Nor is it a "simulated" leather material in that it does not feel or smell like real leather. In fact, McQuade teaches away from using a leather material: "With the rising cost of natural products, such as wood and leather, it has become even more desirable to provide irregularly surfaced high pressure laminates which simulate these natural products." (See Col. 1, lines 50-53)

As stated above, claim 1 recites a heat and pressure consolidated laminate that includes a decorative layer consisting essentially of a leather material. The present application defines the term "leather" as being an "animal hide". (See paragraph 0017) MPEP §2111.01 (I.) clearly states that "the words of a claim must be given their 'plain meaning' unless they are defined within the specification". (See also *In re Alex Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) Such is the case here.

The significance of the definition of the term "leather" provided in the specification is considerable. The present application details: 1) the desirability of using a leather material with cabinetry and/or furniture (e.g., perception of quality, texture/feel, smell, etc.); 2) the disadvantages of historical applications where leather was utilized in furniture and/or cabinetry (e.g., difficult to attach, shrinkage and peel after attachment, limitations in size, etc.); and 3) the advantages of the present invention (e.g., feel/textures, resistant to shrinkage, smell of leather,

etc.). These distinctions illustrate well that a laminate that includes a leather material is clearly distinguishable from a high pressure laminate with a print sheet having a visual appearance intended to look like leather.

In addition, the stated objects of McQuade further illustrate the differences between the laminate of claim 1, and that disclosed within McQuade. The objects include “to obviate or reduce the deficiencies of the prior art, such as that indicated above”; i.e., “the rising cost of natural products, such as wood and leather”. (See Col. 2, lines 5-11) These stated objects are not satisfied by a laminate that utilizes a leather material.

In light of the foregoing, it is respectfully submitted that the rejection of claims 1-2 and 4-6 is not valid and it is respectfully requested that the aforesaid rejection be withdrawn and the claims 1-2 and 4-6 be allowed.

10. Claims 1-6 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,700,537 (hereinafter “Scher”).

As indicated above, case law dictates that the classic test for anticipation, under 35 U.S.C. §102(b), requires that every limitation in a claim must be present in a single source reference for that reference to “anticipate” the claimed invention. (See citations above) Scher cannot anticipate claims 1-6 because it does not disclose a decorative layer consisting essentially of a leather material as is recited in independent claim 1.

Scher discloses a laminate having deeply embossed surfaces, and a method for making the same. The laminate includes a print layer 16 made of conventional construction, preferably of alpha-cellulose paper impregnated with melamine formaldehyde resin. (Col. 5, lines 18-21) Scher indicates that it is desirable to “produce high pressure laminates with deeply embossed surfaces that duplicate natural products such as slate, leather, and wood” (Col. 2, lines 47-56), and that it is an object of the invention to produce such laminates in a simplified and inexpensive manner. Hence, Scher teaches that it is desirable to produce an inexpensive, high pressure laminate that duplicates, but does not use, a natural product such as leather. There is no disclosure within Scher suggesting that a high pressure laminate could be made less expensively by substituting a natural material such as leather in place of a cellulosic print sheet made to look like leather. On the contrary, Scher goes to great lengths to disclose embossing techniques

operable to create a laminate that looks like but is less expensive than a laminate with a leather decorative layer. (e.g., See Col. 1, lines 24-27; Col. 3, lines 62-68)

The present application defines the term “leather” as being an “animal hide”. (See paragraph 0017) MPEP §2111.01 (I.) clearly states that “the words of a claim must be given their ‘plain meaning’ unless they are defined within the specification”. (See also *In re Alex Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) Such is the case here.

The significance of the definition of the term “leather” provided in the specification is considerable. The present application details: 1) the desirability of using a leather material with cabinetry and/or furniture (e.g., perception of quality, texture/feel, smell, etc.); 2) the disadvantages of historical applications where leather was utilized in furniture and/or cabinetry (e.g., difficult to attach, shrinkage and peel after attachment, limitations in size, etc.); and 3) the advantages of the present invention (e.g., feel/textures, resistant to shrinkage, smell of leather, etc.). These distinctions illustrate well that a laminate that includes a leather material is clearly distinguishable from a high pressure laminate with a print sheet having a visual appearance intended to look like leather.

In light of the foregoing, it is respectfully submitted that the rejection of claims 1-6 is not valid and it is respectfully requested that the aforesaid rejection be withdrawn and the claims 1-6 be allowed.

2. Claims 7 and 22-33 are rejected under 35 U.S.C. §103(a) as being unpatentable over McQuade or Scher in view of Lindenfeiser or Albrinck.

The rejection indicates that neither McQuade nor Scher discloses the amount of melamine-formaldehyde resin in the core sheet, and relies upon Lindenfeiser and Albrinck as disclosing melamine-formaldehyde resin within the recited range. Independent claims 7, 26, and 33 all recite a core layer containing a cellulosic sheet impregnated with a *phenol-formaldehyde* resin, not a *melamine-formaldehyde* resin.

Independent claim 7 recites a decorative layer consisting essentially of a bonded leather material. Independent claim 26 recites a decorative layer consisting essentially of a leather material.

A claimed invention is unpatentable if the differences between it and the prior art are “such that the subject matter as a whole would have been obvious at the time the invention was made to a person of ordinary skill in the art.” 35 U.S.C. §103(a); Alza Corporation v. Mylan Laboratories, Inc., 464 F.3d 1286, 1288 (Fed. Cir. 2006) (citing In re Kahn, 441 F.3d 977, 985 (Fed. Cir. 2006) and Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 13-14 (1966)).

The framework for applying the statutory language of 35 U.S.C. §103 requires that “the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.” KSR Int’l Co. v. Teleflex, Inc., 127 S. Ct. 1727, 1734 (U.S. 2007) (quoting Graham, 383 U.S. at 15). The analysis should be made explicit. See In re Kahn, 441 F.3d at 988 (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”).

As indicated above, neither McQuade nor Scher discloses a laminate having a decorative layer consisting essentially of a leather material, including a bonded leather. McQuade and Scher both disclose a laminate having a decorative layer printed to look like leather, and both disclose the motivation for such a laminate is that it is desirable to produce an inexpensive, high pressure laminate that duplicates, but does not use, leather. Additional motivation for a laminate that looks like, but does not contain, actual leather is the enhanced durability and scuff resistance provided by the high pressure laminate with a paper decorative layer versus a laminate with a natural product such as leather. (e.g., see Scher: Col. 2, lines 47-52) Lindenfeiser and Albrinck do not disclose a laminate with a decorative layer consisting essentially of a leather material. Consequently none of the cited references disclose an element recited within claims 7 and 22-33.

The fact that McQuade and Scher disclose a product that is intended to be an alternative to a product having a leather material, teaches away from modifying either reference to include leather.

The present application defines the term “leather” as being an “animal hide”. (See paragraph 0017) MPEP §2111.01 (I.) clearly states that “the words of a claim must be given

their ‘plain meaning’ unless they are defined within the specification”. (See also *In re Alex Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989))

The significance of the definition of the term “leather” provided in the specification is considerable. The present application details: 1) the desirability of using a leather material with cabinetry and/or furniture (e.g., perception of quality, texture/feel, smell, etc.); 2) the disadvantages of historical applications where leather was utilized in furniture and/or cabinetry (e.g., difficult to attach, shrinkage and peel after attachment, limitations in size, etc.); and 3) the advantages of the present invention (e.g., feel/textures, resistant to shrinkage, smell of leather, etc.). These distinctions illustrate well that a laminate that includes a “leather material” is clearly distinguishable from a high pressure laminate with a print sheet having a visual appearance intended to look like leather.

In summary, if one determines the scope and content of the prior art (McQuade, Scher, Lindenfeiser, and Albrinck), and the differences between the aforesaid prior art and the present, it is clear that a heat and pressure consolidated laminate that includes a decorative layer consisting essentially of a leather material is neither disclosed by nor obvious in view thereof for the reasons stated above.

In today’s telephone interview, the undersigned attorney understood Ex. Tran to suggest that the use of leather with furniture and the like was well known. Applicants do not suggest that the use of leather in furniture or the like is novel. On the contrary, the background information of the present application clearly states that leather is a popular construction material. The background also states, however, that under the prior art leather is often difficult to work with because of size limitations, shrinkage, imperfections, etc. The presently claimed heat and pressure consolidated laminate is a product that overcomes these disadvantages and makes it easy to utilize leather in a variety of different applications. (see [0005 – 0009])

In light of the foregoing, it is respectfully submitted that the rejection of claims 7 and 22-33 is not valid and it is respectfully requested that the aforesaid rejection be withdrawn and the claims 7 and 22-33 be allowed.

13. Claims 34-39 are rejected under 35 U.S.C. §103(a) as being unpatentable over McQuade or Scher in view of Hiers. The rejection indicates that Hiers discloses the use of leather containing animal hides. Applicants respectfully direct the Examiner to the remarks above regarding McQuade and Scher.

Hiers discloses a textile fabric with a leather-like appearance. According to Hiers, the motivation for such a product is that natural leather, which is a traditional material for footwear, waist belts, aprons, pouches, etc., presents "technical difficulties in manufacture, economic difficulties in marketing, and durability problems in use. (Col. 1, lines 6-23) Hiers discloses the solution to natural leather is an artificial leather. Hence, Hiers does not disclose a laminate having natural leather, and actually teaches away from the use of natural leather for some of the same reasons disclosed by McQuade and Scher.

In short, for the reasons identified above, none of McQuade, Scher, or Hiers or the combination thereof disclose a heat and pressure consolidated laminate having a decorative layer consisting essentially of a leather animal hide or a bonded leather animal hide, and each actually teaches away from such a laminate.

In light of the foregoing, it is respectfully submitted that the rejection of claims 34-38 is not valid and it is respectfully requested that the aforesaid rejection be withdrawn and the claims 34-38 be allowed.

As applicant has traversed the objections and rejections raised by the Examiner, it is respectfully requested that the Examiner withdraw the stated rejections, allow claims 1-7 and 22-32, and 34-38, and pass the present application on to issuance. In the event the Examiner has a question regarding the present application, or would like to discuss the application, the undersigned attorney invites the Examiner to call at his convenience. If there are any fees due in connection with the filing of this response, please charge them to our Deposit Account 50-3381.

Respectfully submitted,



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